

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

DAMAS J. ALABRE,
Appellant,

v.

DEPARTMENT OF HOMELAND
SECURITY,
Agency,

and

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DOCKET NUMBERS¹
AT-0752-22-0176-R-1
AT-844E-22-0174-R-1

DATE: July 5, 2023

THIS ORDER IS NONPRECEDENTIAL²

Damas J. Alabre, Saint Augustine, Florida, pro se.

Lisa Zito, Miami, Florida, for the Department of Homeland Security.

Sheba Dunnings Banks, Washington, D.C., for the Office of Personnel Management.

¹ We join these two appeals because doing so will expedite case processing and will not adversely affect the interests of the parties. [5 C.F.R. § 1201.36\(b\)](#). The administrative judge may, on remand, sever the appeals and adjudicate them separately.

² A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117\(c\)](#).

BEFORE

Cathy A. Harris, Vice Chairman
Raymond A. Limon, Member

REMAND ORDER

¶1 For the reasons discussed below, we REOPEN on the Board's own motion pursuant to [5 C.F.R. § 1201.118](#) the appeals of *Alabre v. Department of Homeland Security*, MSPB Docket No. AT-0752-22-0176-I-1, and *Alabre v. Office of Personnel Management*, MSPB Docket No. AT-844E-22-0174-I-1. We VACATE the Board's January 27, 2023 Final Order in *Alabre v. Department of Homeland Security*, MSPB Docket No. AT-0752-22-0176-I-1, and the April 1, 2022 initial decision in *Alabre v. Office of Personnel Management*, MSPB Docket No. AT-844E-22-0174-I-1, which became the Board's final decision by operation of law. We REMAND the reopened appeals to the Atlanta Regional Office for further adjudication.

¶2 After the issuance of the January 27, 2023 Final Order in *Alabre v. Department of Homeland Security*, MSPB Docket No. AT-0752-22-0176-I-1, it was discovered that the appellant's email address was input incorrectly into the Board's case management system due to an internal clerical error and that, as a result, the appellant did not receive email notification of agency filings and Board issuances in his appeals. See [5 C.F.R. § 1201.14\(j\)\(1\)](#). The appellant was thus effectively denied the opportunity to prosecute his appeals. See *McGuire v. U.S. Postal Service*, [5 M.S.P.R. 54](#), 56 (1981) (finding that an administrative judge's failure to serve an appellant with copies of requests for documentation denied the appellant the opportunity to timely prosecute his appeal). Under these unusual circumstances, we find it appropriate to reopen these appeals, vacate the Board's final decisions, and remand the appeals for further adjudication. [5 C.F.R. §§ 1201.117-.118](#).

ORDER

¶3 For the reasons discussed above, we remand these appeals to the Atlanta Regional Office. On remand, the administrative judge shall ensure that the appellant is being properly served with Board issuances and agency submissions in each appeal and shall afford the parties an opportunity to develop the record, hold a hearing if appropriate, and issue an initial decision addressing all relevant issues.

FOR THE BOARD:

/s/ for

Jennifer Everling
Acting Clerk of the Board

Washington, D.C.